

VZCZCXRO2366

RR RUEHAG RUEHDF RUEHIK RUEHLZ RUEHROV RUEHSR

DE RUEHMD #1346/01 3571322

ZNR UUUUU ZZH

R 221322Z DEC 08

FM AMEMBASSY MADRID

TO RUEHC/SECSTATE WASHDC 5808

INFO RUCNMEM/EU MEMBER STATES COLLECTIVE

RUEHLA/AMCONSUL BARCELONA 3723

RUCPDOC/DEPT OF COMMERCE WASHDC

UNCLAS SECTION 01 OF 03 MADRID 001346

SENSITIVE

SIPDIS

STATE FOR EUR/WE, EEB/TPP/IPE, EEB/CIP

STATE PASS USTR DWEINER

USDOC FOR 4212/DCALVERT

USDOC ALSO FOR PTO

E.O. 12958: N/A

TAGS: ETRD KCRM KIPR SP

SUBJECT: IPR IN SPAIN: ROUND-UP OF RECENT NOTEWORTHY ACTIVITIES

REF: A. MADRID 1318

1B. MADRID 1194

1C. MADRID 1150

MADRID 00001346 001.2 OF 003

SENSITIVE BUT UNCLASSIFIED - PLEASE PROTECT ACCORDINGLY

SUMMARY

11. (U) On November 25, Spain's Congress issued a non-binding resolution calling on the GOS to develop a strategy to combat internet piracy. Separately, Culture Minister Molina announced that the government anticipates new regulations to protect online content. Content providers continue to complain that the government is not doing enough about IPR infringement on the internet. The Spanish chapter of the Business Software Alliance (BSA) released a survey that shows software piracy rates in Spain significantly higher than elsewhere in Europe. The local BSA head, like other rights-holders, opines that the government is reluctant to press the telecommunications companies to do more to combat internet piracy, but that if concrete progress is not made soon, the government may see itself forced to act sometime in the next year. The Anti-Piracy Coalition and the Internet Service Providers' (ISP) association are expected to give the Minister of Industry, Tourism, and Trade a bare-bones agreement on a graduated response mechanism by December 31. Rights-holders say the parties remain far apart on several key issues, and bridging the difference will be a challenge, but they expect the government to try to move quickly once an agreement is presented. End Summary.

NON-BINDING CONGRESSIONAL RESOLUTION

12. (U) On November 25, the Plenary of the Congress of Deputies (lower house of Parliament) communicated to the government the following non-binding resolution:

"The Congress of Deputies, in accordance with the Conclusions of the European Council of Culture Ministers of November 20, 2008 on development of legal offers of on-line cultural and creative content and the prevention and combating of piracy in the digital environment, urged the Government, in the Framework of the Inter-Sectorial Commission against Piracy, to promote an effective strategy, approved by consensus, to fight activities in the digital environment that violate intellectual property rights, based on agreement among all sectors involved: the content industry, internet operators, consumers, and users.

"This strategy must ensure fair balance in the exercise of fundamental rights, particularly the right to the protection of personal data, freedom of expression and of access to information and communication secrecy, and defense of intellectual property. Furthermore, this activity must be supplemented by promoting respect for intellectual property rights and support for the development of new markets and new marketing models for the cultural industry that are fully adapted to the digital environment."

¶3. (U) According to Salvador Soriano, Deputy Director for Information Society Services in the Ministry of Industry, Tourism, and Trade, the government did not initiate or sponsor the resolution. Rather, it was the brainchild of a Spanish Socialist Workers' Party (PSOE - ruling party) deputy from Madrid, Rafael Simancas, spokesman of the Committee on Culture. Soriano said the government was pleased with the resolution because it suggests that Congress may be receptive to whatever legislative proposals to provide stronger protection for digital content might result from ongoing discussions between content providers and ISPs.. Any such proposal is expected to be controversial, especially among internet users' associations, whose members tend to oppose vocally any initiatives that might restrict or limit their on-line activities. Hoping to blunt such opposition, the government continues to press the ISP association, Redtel, and the Anti-Piracy Coalition to agree on measures to protect content online. While the parties are making progress in their negotiations, they remain far apart on several issues, especially legal requirements needed to implement an agreement and the nature of a collaborative business model between service and content providers to make copyright-protected material legally available online.

MADRID 00001346 002.2 OF 003

CULTURE MINISTER SAYS NEW ANTI-PIRACY MEASURES COMING SOON

¶4. (U) In a December 17 speech, Minister of Culture Cesar Antonio Molina said different approaches for sanctioning repeat IPR offenders are being considered and that the GOS expects to introduce new regulations in the not-too distant future. The Minister acknowledged that the measures will be unpopular but commented that "what is really unpopular, ruinous, and a disaster is that the thousands of jobs generated by culture could disappear as a result of this illegitimate activity." Characterizing internet piracy as "a termite that is destroying an entire industry network," Molina noted that the issue is the subject of frequent discussion among EU Ministers. (Comment: We believe Molina was referring to the GOS preparing to respond to an expected joint request from Redtel and the Coalition for it to take certain measures, and not to a separate effort. End Comment.)

BUSINESS SOFTWARE ALLIANCE RELEASES STUDY

¶5. (U) On December 10, the Spanish chapter of the Business Software Alliance (BSA) released a study on software piracy that ranked Spain in 12th place worldwide in 2007 with losses of USD 900 million generated by software piracy. The study found that over the past five years, Spain has been consistently 8-12 points above the western European average in percentage of software pirated, with a 43 percent piracy ratio in 2007 as opposed to 33 percent for western Europe.

¶6. (U) According to Luis Frutos Miralles of Sage Spain, President of the Spanish chapter of BSA, business software piracy in Spain comes in three forms. First is the traditional practice, especially prevalent among small and medium-sized enterprises, of purchasing one license and distributing the software package to multiple employees. The national government does not pirate software in this way. BSA is less certain about the autonomous community

governments but believes that their compliance is generally good. There are, however, a number of municipal governments that BSA suspects of using pirated software, and Frutos said further public education efforts are needed to bring these towns into line. BSA regularly conducts campaigns aimed at small and medium-sized businesses and is working to expand its outreach to regional and local governments as well.

¶17. (U) Another source of piracy is for authorized distributors, often in an effort to increase their competitive advantage, to give away or sell at nominal prices software as part of hardware installations and other commercial agreements. Software companies, Frutos said, have trouble policing all their distributors and enforcing the terms of their contracts, and wondered if this was also a problem in the U.S. or in other EU countries. Finally, Frutos said, the volume of illegal downloads of protected software on the internet is source of growing concern.

¶18. (SBU) BSA is not a member of the Anti-Piracy Coalition, which comprises mostly movie and music companies and copyright management societies; the local entertainment software alliance has only just joined. However, in talking about digital piracy and the government's efforts to curb it, Frutos spoke in much the same terms as representatives of PROMUSICAE or the Motion Picture Association (MPA) or the General Society of Authors and Publishers (SGAE - see septel). He said BSA has developed a proposal to send warning letters to infringers, which it plans to present to ISPs and the government. In his view, Telefonica and the other major telcos, which own the ISPs, are driving a very hard bargain and resisting any commitment that would require them to monitor or police their customers. The GOS, especially the Ministry of Industry, Tourism, and Trade, is reluctant to force the telecoms to do anything against their will. At the same time, the government wants the telecoms to show more flexibility so that the government can avoid intervening overtly to impose a solution. Frutos predicted that the situation will remain frozen until at some point in the next year the government sees itself forced to take some sort of forceful action against piracy.

COMMENT

¶19. (SBU) The recent GOS-sponsored Digital Content (FICOD)

MADRID 00001346 003.2 OF 003

and IPR Conferences and the launch of the Ministry of Culture's public education campaign (ref A) appear to have foreshadowed a series of other IPR-related events which have increased public attention to the issue. The Congressional resolution, while non-binding, shows that legislators understand the need for action. The Ministry of Culture, which sees artists as entertainers and their representatives as important constituents, understands how serious the piracy problem is and wants the government to be more proactive in addressing the issue, as evidenced by the Minister's remarks that new regulations are coming. However, another key player, the Ministry of Industry, Tourism, and Trade, remains somewhat less forward-leaning, and the GOS as a whole continues to defer action pending an agreement between the ISPs and rights-holders. The new President of the Anti-Piracy Coalition and the local MPA representative told us last week that Industry, Tourism, and Trade Minister Miguel Sebastian wants to see an agreement by December 31, and that the parties will oblige by presenting a bare-bones document that lists some areas of agreement on development of a graduated response regime, but both noted that the parties remain far apart on several critical issues related to implementation. They believe, however, that the government may move quickly once this new agreement is presented. End Comment.

AGUIRRE